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Remarks:

These remarks are responsive to the Office action dated March 5, 2007. Claims 1-45 are pending in the application, prior to entry of the present amendments to the claims. In the Office action, the Examiner imposed a restriction requirement requiring election of a single invention (Group I, II, or III) under 35 U.S.C. § 121. In addition, the Examiner required an election of species if applicants elect Group I or Group II.

In response, applicants have

- (1) elected the invention of Group I (method claims 1-23), without traverse;
- (2) canceled all claims of non-elected Groups II and III, without prejudice;
- (3) requested reconsideration of the requirement for an election of species supported by remarks showing that the election requirement is improper;
- (4) elected Species 1, with traverse;
- (5) canceled independent claim 8 of elected Group I, without prejudice;
- (6) amended claims 9-16 to depend ultimately from claim 1;
- (7) amended claims 1, 3-7, 9-12, and 14-22 to improve clarity and/or to more particularly claim aspects of the invention that applicants want to patent now; and
- (8) added new claims 46-52.

Further aspects of the elections of an invention and of a single species are presented in the sections below.

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I. Election of an Invention

The Examiner required restriction to one of the following inventions under 35 U.S.C. § 121:

- I. Claims 1-23, drawn to a method of dispensing a medicament;
- II. Claims 24-44, drawn to a device for dispensing medicaments or to an ejector; or
- III. Claim 45, drawn to a program storage device.

In response, applicants hereby elect Group I (claims 1-23) drawn to a method of dispensing a medicament. Furthermore, to expedite prosecution, applicants have canceled all of the non-elected claims of Groups II and III, claims 24-45, without prejudice.

II. Election of a Species

The Examiner also required election of a single species from Group I for prosecution on the merits and "to which the claims shall be restricted if no generic claim is finally held to be allowable." In particular, the Examiner alleged that claims 1-23 collectively represent the following four species:

Species 1 - claims 1-7;

Species 2 - claims 8-16;

Species 3 - claims 17-21; and

Species 4 - claims 22 and 23.

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Applicants traverse the requirement for an election of species because the requirement is improper. More particularly, applicants submit that the Examiner has improperly imposed an election of species based on alleged species that are not mutually exclusive.

The MPEP provides explicit instructions for determining whether or not a species restriction is proper. In particular, the MPEP states the following: "to require restriction between claims limited to species, the claims must not overlap in scope" [see MPEP § 806.04(f)]. In other words, the claims must be directed to subject matter that is mutually exclusive.

Applicants assert that Species 1-4 all overlap in scope. For example, Species 1 and 2 overlap in scope because original claims 1 and 8 (of respective Species 1 and 2) differ only in that claim 1 involves "a droplet characteristic" and claim 8 involves a particular droplet characteristic, namely, droplet size. To underscore the overlap in scope between alleged Species 1 and 2, applicants have canceled independent claim 8, without prejudice, and have amended each of claims 9-16 to depend ultimately from claim 1. In addition, Species 1 (claims 1-8) and Species 3 (claims 17-21) overlap in scope because nothing recited by claim 17 is absolutely excluded from the subject matter of claim 1, and vice versa. Similarly, following a parallel argument, each other pairing of species (Species 1 and 4, Species 2 and 3, and Species 3 and 4) overlaps in scope. The Examiner came to the same conclusion in the Office action by stating that each species has an element not required by any of the other species. In contrast, as explained above, the standard for requiring an election of species is that each species

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must have an element excluded by each of the other species. Therefore, the alleged species claims do not correspond to mutually exclusive species and thus it is improper to impose a requirement for election of species.

Applicants also request clarification regarding the embodiments corresponding to Species 1-4. The MPEP states that "claims are definitions or descriptions of inventions. *Claims themselves are never species.*" [see MPEP § 806.04(e)] Accordingly, since the Examiner has defined the species using claims, applicants do not know what embodiment is intended by each species designation. For example, the Examiner stated that Species 2 (claims 8-16) "requires the medicament to include nicotine or [a] nicotine analog." However, only claim 15 of this sub-group recites "nicotine or [a] nicotine analog." Applicants thus do not know why Species 2 is defined by claims 8-16, instead of only claim 15, and also do not know whether or not Species 2 is defined as an embodiment involving nicotine. Applicants are similarly perplexed by each of the other species designations.

Nevertheless, in order for this communication to be deemed fully responsive, applicants hereby elect Species 1, with traverse, for prosecution on the merits in the present application. Based on applicants' current understanding of Species 1, applicants assert that all of the pending claims, after entry of the claim amendments, read on the elected species. However, applicants respectfully request reconsideration of the requirement for a species election.

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III. Conclusion

Applicants submit that this application is now in condition for allowance, in view of the above remarks. Accordingly, applicants respectfully request that the Examiner issue a Notice of Allowability covering the pending claims. If the Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned attorney of record.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to Examiner K. Lewis, Group Art Unit 3772, Assistant Commissioner for Patents, at facsimile number (571) 273-8300 on April 5, 2007.



Christie A. Doolittle

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